

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AVALON HOLDINGS CORPORATION,

Plaintiff,

Case No.: 1:18-cv-7291-VSB-RWL

– against –

GUY GENTILE AND MINTBROKER INTERNATIONAL, LTD.,

Defendants
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**DECLARATION OF DANIELLE M. MCCLAUGHLIN IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

1. I am an attorney with the law firm Ford O’Brien LLP and counsel for Defendants Guy Gentile and Mintbroker International, Ltd. (“Mintbroker”) in this case. I make this declaration from my personal knowledge and, if called up on to do so, could and would competently testify as to the matters set forth herein in a court of law. I submit this Declaration in support of Defendants’ Motion for Summary Judgment and to place before the Court a true and correct copy of certain documents.
2. Attached hereto as **Exhibit 1** is a true and accurate copy of the Avalon Holdings Corporation (“Avalon”) website homepage, AVALON HOLDINGS CORPORATION, <https://www.avalonholdings.com> (last visited August 4, 2020).
3. Attached hereto as **Exhibit 2** is a true and accurate copy of a Yahoo Finance Historical Chart of the Avalon Share Price between January 1, 2018 and December 31, 2018 (last visited August 4, 2020).
4. By my calculations based upon Exhibit 2, the highest closing share price of \$4.80 in the second half of 2018 represents a 100% increase over the highest closing share price of

\$2.40 in the first half of 2018, and the lowest closing share price of \$2.65 in the second half of 2018 represents a 32.5% increase over the lowest closing price of \$2.00 in the first half of 2018.

5. Attached hereto as **Exhibit 3** is a true and accurate copy of an excerpt of an Interactive Brokers Trade Blotter produced by Interactive Brokers in discovery in this matter, entitled “REDACTED--plaintiffs_GBR_AWX_tradeblotter.xls”, showing the first ten positions Mintbroker took in Avalon stock.
6. By filtering the Interactive Brokers Trade Blotter for symbol “AWX” trades and Account Title “Mintbroker International, Ltd.” I calculate that Mintbroker undertook approximately 18,460 trades between opening a position and closing a position in Avalon securities.
7. Attached hereto as **Exhibit 4** is a true and accurate copy of an excerpt of an Interactive Brokers Trade Blotter produced in discovery in this matter, entitled “REDACTED--plaintiffs_GBR_AWX_tradeblotter.xls” showing the last ten positions Mintbroker took in Avalon stock.
8. Attached hereto as **Exhibit 5** is a true and accurate copy of the SEC Form 3 filed by Mintbroker on July 7, 2018.
9. Attached hereto as **Exhibit 6** is a true and accurate copy of the SEC Form 4 filed by Mintbroker on August 1, 2018.
10. Attached hereto as **Exhibit 7** is a true and accurate copy of the SEC Form 13-D filed by Mintbroker on August 22, 2018.
11. By calculating the accumulated position in symbol “AWX” shares for Account Title “Mintbroker International, Ltd.” in the Interactive Brokers Trade Blotter I calculate that

Mintbroker's position in Avalon securities briefly exceeded 10% on July 24, 2018 for eleven seconds between 2:46:41 p.m. and 2:46:52 p.m. Mintbroker again briefly exceeded a 10% position in Avalon securities on July 24, 2018 for less than four minutes between 2:54:21 p.m. and 2:58:08 p.m. At 3:06 p.m. on July 24, 2018, Mintbroker entered a greater than 10% position in AWW, which it exited on July 31, 2018 at 12:02 p.m. (the "Alleged Short Swing Period"). The Alleged Short Swing Period comprised six trading days: July 24, July 25, July 26, July 27, July 30, and July 31 (excluding July 28 and 29, a weekend).

12. By filtering the Interactive Brokers Trade Blotter for symbol "AWW" trades and Account Title "Mintbroker International, Ltd." between 3:06 p.m. on July 24, 2018 and 12:02 p.m. on July 31, 2018, I calculate that Mintbroker undertook approximately 15,511 trades in the Alleged Short Swing Period.
13. By filtering the Interactive Brokers Trade Blotter for symbol "AWW" trades and Account Title "Mintbroker International, Ltd.", the maximum position Mintbroker reached was 57.5% of the outstanding stock on of Avalon on July 27, 2018 at 1:56 p.m.
14. Attached hereto **Exhibit 8** is a true and accurate copy of the Broadridge Financial Services Avalon Shareholder List, 7/23/2018 to 8/11/18, produced in this litigation by Broadridge Financial Services, the transfer agent of Avalon. Neither Interactive Brokers nor either of Defendants appear on this list.
15. The Avalon Shareholder List shows that there were 3,263,585 shares in Avalon stock outstanding during the relevant period.

16. Row 247 of the Avalon Energy Shareholder List demonstrates that the number of Avalon shares owned by “Cede & Co.” during the relevant period and available for street-side trading during the relevant period was 3,250,012 (the “Float”).
17. Attached hereto as **Exhibit 9** is a true and accurate copy of excerpts of *Practical Guide to SEC Proxy/Compensation Rules*, 2006 Supplement, Chapter 12 “Street Name” Registration & the Proxy Solicitation Process, by John C. Wilcox et al., *available at* <https://www.sec.gov/comments/4-537/4537-25.pdf> (last visited August 6, 2020).
18. Attached hereto as **Exhibit 10** is a true and accurate copy of a Consolidated Trade Summary for Interactive Brokers’ trades in Avalon securities produced in third party discovery in this matter by the Depository Trust Company (“DTC”), entitled “GBR UTC CTS 07-23-19 to 08-03-18 Trade Summary M209.” The columns K-R and Y-AI are hidden because they do not contain relevant information and in order for this exhibit to be uploaded to the ECF in a manageable .pdf format.
19. Page 3 of Exhibit 10 is a calculation of the buy positions, sell positions, and total trading by Interactive Brokers’ customers during the Alleged Short Swing Period as a percentage of the Float.
20. Attached hereto as **Exhibit 11** is a true and accurate copy of the Yahoo Finance historic trading volume in Avalon for the days encompassing the Alleged Short Swing Window: July 24, 2018 through July 31, 2018 (last visited July 22, 2020).
21. Adding the trading volume together for each day of the Alleged Short Swing Window, the total trading volume was **45,936,800 shares** (the “Total Trading Volume”).
22. By dividing the July 24, 2018 trading volume into the Avalon Float I calculate that the July 24, 2018 trading by all market participants in Avalon represented **76.49 % of the**

Float. By dividing the July 24, 2018 trading volume into the Avalon Available Float I calculate that July 24, 2018 trading by all market participants in Avalon represented **146.25% of the Available Float.**

23. By dividing the July 25, 2018 trading into the Avalon Float, I calculate that the July 25, 2018 trading by all market participants in Avalon Shares represented **328.00% of the Float.** By dividing the July 25, 2018 trading volume into the Avalon Available Float I calculate that July 25, 2018 trading by all market participants in Avalon represented **627.08% of the Available Float.**

24. By dividing the July 26, 2018 trading volume into the Avalon Float, I calculate that the July 26, 2018 trading by all market participants in Avalon shares represented **317.13% of the Float.** By dividing the July 26, 2018 trading volume into the Avalon Available Float I calculate that July 26, 2018 trading by all market participants in Avalon represented **606.29% of the Available Float.**

25. By dividing the July 27 trading volume into the Avalon Float, I calculate that the July 27, 2018 trading by all market participants in Avalon shares represented **393.83% of the Float.** By dividing the July 27, 2018 trading volume into the Avalon Available Float I calculate that July 27, 2018 trading by all market participants in Avalon represented **752.91% of the Available Float.**

26. By dividing the July 30 trading volume into the Avalon Float, I calculate that the July 30, 2018 trading by all market participants in Avalon shares represented **175.60% of the Float.** By dividing the July 30, 2018 trading volume into the Avalon Available Float I calculate that July 30, 2018 trading by all market participants in Avalon represented **335.94% of the Available Float.**

27. By dividing the July 31 trading volume into the Avalon Float, I calculate that the July 31, 2018 trading by all market participants in Avalon shares represented **122.37% of the Float**. By dividing the July 31, 2018 trading volume into the Avalon Available Float I calculate that July 31, 2018 trading by all market participants in Avalon represented **233.94% of the Available Float**.
28. By dividing the Total Trading Volume into the Avalon Float, and the Total Trading Volume into the Available Float, I calculate that the trading by all market participants in Avalon on the days encompassing the Alleged Short Swing Period represented **1413.43% of the Float and 2,702.16% of the Available Float**.
29. By adding the number of shares purchased and the number of shares sold by Interactive Brokers customers on July 24, 2018 according to DTC (as set out in Exhibit 10) (the “July 24 IB Volume”) and then dividing the July 24 IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the July 24, 2018 Interactive Brokers customers’ trading volume represented **47.01% of the Float and 89.88% of the Available Float**.
30. By adding the number of shares purchased and the number of shares sold by Interactive Brokers customers on July 25, 2018 according to DTC (as set out in Exhibit 10) (the “July 25 IB Volume”) and then dividing the July 25 IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the July 25, 2018 Interactive Brokers customers’ trading volume represented **66.71% of the Float and 127.53% of the Available Float**.
31. By adding the number of shares purchased and the number of shares sold by Interactive Brokers customers on July 26, 2018 according to DTC (as set out in Exhibit 10) (the

“July 26 IB Volume”) and then dividing the July 26 IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the July 26, 2018 Interactive Brokers customers’ trading volume represented **66.6% of the Float and 127.32% of the Available Float.**

32. By adding the number of shares purchased and the number of shares sold by Interactive Brokers customers on July 27, 2018 according to DTC (as set out in Exhibit 10) (the “July 27 IB Volume”) and then dividing the July 27 IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the July 27, 2018 Interactive Brokers customers’ trading volume represented **54.6% of the Float and 104.35% of the Available Float.**

33. By adding the number of shares purchased and the number of shares sold by Interactive Brokers customers on July 30, 2018 according to DTC (as set out in Exhibit 10) (the “July 30 IB Volume”) and then dividing the July 30 IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the July 30, 2018 Interactive Brokers customers’ trading volume represented **54.4% of the Float and 104.07% of the Available Float.**

34. By adding the number of shares purchased and the number of shares sold by Interactive Brokers customers on July 31, 2018 according to DTC (as set out in Exhibit 10) (the “July 31 IB Volume”) and then dividing the July 31 IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the July 31, 2018 Interactive Brokers customers’ trading volume represented **60.9% of the Float and 116.49% of the Available Float.**

35. By adding the total number of shares purchased and the total number of shares sold by Interactive Brokers customers during the Alleged Short Swing and then dividing the total IB Volume into the Avalon Float and the Avalon Available Float, I calculate that the Total IB Volume represented **350.3% of the Float and 669.63% of the Available Float.**
36. Attached hereto as **Exhibit 12** is a true and accurate copy of an analysis of Mintbroker's trading positions in Avalon during the Alleged Short Swing Period that I prepared using data from the Interactive Brokers Trade Blotter, "REDACTED--plaintiffs_GBR_AWX_tradeblotter.xls, produced in third party discovery in this matter by Interactive Brokers. This analysis was performed and provided in this manner because the Trade Blotter itself, even filtered for the relevant securities and market participant, is in excess of 30,000 lines long.
37. Attached hereto as **Exhibit 13** is a true and accurate copy of the so-ordered Joint Stipulation as to Certain Facts for Purposes of Summary Judgment, ECF Doc. No. 62 (Filed May 14, 2020).
38. Attached hereto as **Exhibit 14** is a true and accurate copy of *SEC Adopts T+2 Settlement Cycle for Securities Transactions*, SECURITIES AND EXCHANGE COMMISSION, available at <https://www.sec.gov/news/press-release/2017-68-0> (last visited July 27, 2020).
39. Attached hereto as **Exhibit 15** is a true and accurate copy of, *Interactive Brokers Overview of T+2 Settlement*, INTERACTIVE BROKERS, available at <https://ibkr.info/node/2930> (last visited August 6, 2020).
40. Attached hereto as **Exhibit 16** is a true and accurate copy of Mintbroker International, Ltd.'s Interactive Brokers 2018 Annual Statement, produced in this action in third party discovery by Interactive Brokers.

41. Attached hereto as **Exhibit 17** is a true and accurate copy of excerpts of Mintbroker's Interactive Brokers long account "UL" 2018 Activity Statement, produced in this action in third party discovery by Interactive Brokers.
42. Attached hereto as **Exhibit 18** is a true and accurate copy of excerpts of Mintbroker's Interactive Brokers short account "US" 2018 Activity Statement, produced in this action in third party discovery by Interactive Brokers.
43. Attached hereto as **Exhibit 19** is a true and accurate copy of excerpts of the deposition testimony of Brad Klauseger, Interactive Brokers' 30(b)(6) witness, dated May 27, 2020.
44. Attached hereto as **Exhibit 20** is a true and accurate copy of the results of a SDNY PACER search for attorney, Firstname "David" Lastname "Lopez", cause of action "15:0078 (15:78m(a) Securities Exchange Act)". The search returned 325 results.
45. Attached hereto as **Exhibit 21** is a true and accurate copy of the results of a SDNY PACER search for attorney, Firstname "Miriam" Lastname "Tauber", cause of action "15:0078 (15:78m(a) Securities Exchange Act)". The search returned 47 results, Ms. Tauber was plaintiff-side attorney in 45 of those cases.
46. Attached hereto as **Exhibit 22** is a true and accurate copy of the results of a SDNY PACER search for party, Firstname "Deborah" Lastname "Donoghue", cause of action "15:0078" (15:78m(a) Securities Exchange Act)". Ms. Donoghue has brought approximately 146 16(b) cases since approximately 2001.
47. Plaintiff Deborah Donoghue was substituted for Plaintiff Richard Morales or designated as plaintiff/executrix of Richard Morales in eight cases in 2001:
 - a. *Donoghue, et al v. Flightserv.Com, et al.*, No. 1:00-cv-03987-JSM
 - b. *Donoghue, et al v. Miracor Diagnostics, et al.*, No. 1:00-cv-06696-JGK

- c. *Morales, et al v. Natural Microsystems, et al.*, No. 1:01-cv-00708-RWS
- d. *Morales, et al v. CT Holdings Inc., et al.*, No. 1:01-cv-01303-KMW-KNF
- e. *Donoguhe v. Integrated Business, et al.*, No. 1:01-cv-02407-KMW
- f. *Donoghue v. Opti, Inc., et al.*, No. 1:01-cv-02447-MP
- g. *Donoghue v. Equitex, Inc., et al.*, No. 1:01-cv-06132-WK
- h. *Donoghue v. Spatializer Audio, et al.*, No. 1:01-cv-07286-AKH

McLaughlin Decl. Exhibit 22.

48. Attached hereto as **Exhibit 23** is a true and accurate copy of the results of a SDNY PACER search for party, Firstname “Richard” Lastname “Morales”, cause of action “15:0078” (15:78m(a) Securities Exchange Act)”. This plaintiff brought at least 88 16(b) cases with Attorney Lopez.
49. Attached hereto as **Exhibit 24** is a true and accurate copy of the results of a SDNY PACER search for party, Firstname “C.R.A. Realty Corp”, cause of action “15:0078” (15:78m(a) Securities Exchange Act)”. This plaintiff has brought approximately 50 cases with Attorney Lopez.
50. Attached hereto as **Exhibit 25** is a true and accurate copy of the results of a SDNY PACER search for party, Firstname “Aaron” Lastname “Rubenstein”, cause of action “15:0078 (15:78m(a) Securities Exchange Act)”. This plaintiff has brought approximately 24 16(b) cases with Attorney Lopez and/or Tauber.
51. Attached hereto as **Exhibit 26** is a true and accurate copy of the results of a SDNY PACER search for party, Firstname “Mark” Lastname “Rubenstein”, cause of action “15:0078 (15:78m(a) Securities Exchange Act)”. This plaintiff has brought approximately 11 16(b) cases with Attorney Lopez and/or Tauber.

52. Attached hereto as **Exhibit 27** is a true and accurate copy of a NYSE complaint file, produced by the NYSE in third party discovery in this action.
53. Attached hereto as **Exhibit 28** is a true and accurate copy of Avalon executives' emails produced in this matter by Plaintiff.
54. Based upon Avalon's own analysis of its shareholders in Exhibits 27 and 28, as of July 24, 2018 there were only approximately "1.7 million shares" left to trade when backing out the greater than 5% registered shareholders who had not traded in their Avalon stock, those shareholders identified as Ron Klinge, Anil Nalluri, Dimension Fund Advisors LP, and Comprehensive Financial Planning (the "Available Float"). I calculate that the Available Float is 52% of Avalon's outstanding shares.
55. Attached hereto as **Exhibit 29** is a true and accurate copy of an excerpt of the AYRO Inc. 2013 Annual Report.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 10, 2020 in New York, N.Y.

/s/ Danielle McLaughlin
Danielle M. McLaughlin